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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,457	10/25/2001	Jay E. Bauer	113611-002	4061

24573 7590 02/18/2005

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EXAMINER	
TRAN LIEN, THUY	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/046,457	BAUER ET AL.	
	Examiner	Art Unit	
	Lien T Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 January 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-24* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-24* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 is vague and indefinite. Claim 14 depends from claim 11 and recites heating the dough to a temperature between 130-160 degree F; however, claim 11 recites heating the dough to a temperature of more than 140 degree F and less than 160 degree F. It is not seen how the claim further limits claim 11 when the temperature range is outside the range cited in claim 11.

Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schiffmann et al (3630755).

Schiffmann disclose a method for proofing cut pieces of yeast-containing dough and dough product obtained from such method. The method comprises the steps of forming a dough by mixing a dry mix with water and yeast, forming the dough into shaped pieces and proofing the pieces by passing into a first zone for proofing and then into a second zone for further proofing. The temperature of the dough leaving the first zone is about 100 degree F and the temperature of the dough leaving the second proofing zone is about 120 degree F. The dough is removed from the proofing field before any portion of the dough has reached a temperature at which yeast is killed. The proofing is done in oven in which the ambient temperature is maintained at 100-130 degree F to insure the proper formation of a gas-retaining skin of the proofed dough. During the first proofing, appreciable gassing of the yeast take place and more gas is generated during the second proofing. The method is done by passing the dough

pieces on a conveyor belt through the different zones. The dry mix has the composition as set forth on top of column 5. (see columns 2,5 and col. 6 lines 73-75)

Schiffmann et al do not disclose a superproofed skin as recited in claims 1 and 6, the temperature range of claims 6, 11 and 23 packaging the dough, pick up by the use of suction cups, package at frozen and refrigerated condition, package in presence of oxygen, adding ascorbic acid, the equipment as claimed and storing under freezing condition.

The limitation of " a superproofed skin and effective for inactivating at least some yeast on the skin" does not define over Schiffmann et al because they heat the dough to within the temperature range of 100-130 degree F. Applicant discloses on page 10 that the superproofing step is done when the dough product is quickly heated to a temperature of about 120-160 degree F. The temperature disclosed by Schiffmann et al falls within this range. Thus, any result obtained form such heating will obviously be present in the Schiffmann et al dough. With respect to claim 6, the difference in the temperature is a difference in the processing step and does not determine the patentability of the product. As disclose on page 10 of the specification, the superproofed skin can be obtained with temperature lower than 140 degree F. The first and second proofings disclosed by Schiffmann et al are equivalent to the claimed proofing and superproofing. The yeast in the Schiffmann et al process is not killed, thus, it is obvious that live yeasts are still in the dough and that further expansion will take place upon baking. It is obvious gas pockets formed with the dough in the Schiffmann et al process because the dough comprises yeast and undergoes proofing.

With respect to claims 11 and 23, it would have been obvious to one skilled in the art to adjust the temperature in accordance to the time. For example, it would have been obvious to use higher temperature for shorter period of time or lower temperature for a longer period time. Applicant has not shown anything unexpected or criticality with respect to the claimed temperature range. As shown in the specification, the superproofed skin can be obtained with temperature that is lower than 140 degree F. It would have been obvious to one skilled in the art to package the Schiffmann et al dough when the product is intended for commercial distribution. Such packaging is well known in the art. It would also have been obvious to one to store the dough under freezing condition to have long term storage. Such process is well known in the art as exemplified in the prior art to Benjamin et al and Sluimer submitted by applicant. Freezing or packaging under modified gas packaging are two known methods to extend the shelf life of food product. When the product is stored under freezing condition, modified gas packaging is not necessary and it is obvious the product can be packaged under atmospheric condition which inherently includes the presence of oxygen. It would also have have obvious to one skilled in the art to add ascorbic acid because it is a common dough additive and it also serves to give the product additional vitamin. As to the type of equipment used, it would have been obvious to one skilled in the art to use any type of equipment as long as the required steps can be carried out. Applicant has not shown any unexpected result or criticality in the claimed equipment. Since the Schiffmann et al product also has the skin on the outer surface, it is obvious that it can be picked up by suction cups. It would have been obvious to use any device to carry

out the method; the type of equipment used does not affect the step or the outcome of the product. When the product is frozen, it would have been obvious to thaw the product in the refrigerator to prevent any possibility of microbial contamination.

In the response filed 10/21/04, applicant argues that the product of Schiffmann et al will never have a superproofed skin as claimed because the process never heats the dough to a temperature of more than 130 degree F. This argument is not persuasive because applicant shows on page 10 that the superproofing can be done as temperature below 130 degree F. Page 10 recites a temperature of about 120-160 degree F. Applicant further argues temperatures above 130 degree F would normally be avoided as one would expect partially baking to occur. The argument is not supported by factual evidence. Furthermore, whether partial baking occurs or not depends on the duration of such heat treatment. One can use lower temperature for a longer period of time or higher temperature for a shorter period of time.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

February 16, 2005

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1702